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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Janelle M Gephart,

10 Plaintiff,

11 v.

12 TD Bank NA, et al.,

13 Defendants.

14
15 **NO. CV-22-01652-PHX-SMM**

16 **RULE 16 SCHEDULING ORDER**

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19 On January 20, 2023, a Preliminary Pretrial Conference was held in open Court
20 pursuant to Rule 16(b) of the Federal Rules of Civil Procedure. The Court then temporarily
21 stayed discovery until March 24, 2023, to give the parties time to settle. However, the
22 parties have not indicated that settlement discussions have been successful. Accordingly,
23 the Court issues this Scheduling Order.

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25 Prior to the conference, the parties filed a Rule 26(f) Case Management Plan.
26 Pursuant to the terms of the Case Management Plan, and the representations made by the
27 parties at the Rule 16 Preliminary Pretrial Conference, all parties were ordered to comply
28 with the deadlines established in this Order.

29 **IT IS HEREBY ORDERED** that the current provisions of the Federal Rules of
30 Civil Procedure shall apply to all proceedings concerning this case.

31 **IT IS FURTHER ORDERED** that all Initial Disclosures as defined in Federal Rule
32 of Civil Procedure 26(a), if not already exchanged prior to the time of this Preliminary
33 Pretrial Conference, shall be made **no later than five (5) days** after date of entry of this

1 Order.

2 **IT IS FURTHER ORDERED** that to satisfy the requirements of Federal Rule of
3 Civil Procedure 26(a), the parties shall file with the Clerk of the Court a Notice of Initial
4 Disclosure, rather than copies of the actual disclosures.

5 **IT IS FURTHER ORDERED** that all discovery, answers to interrogatories, and
6 supplements to interrogatories must be completed by September 15, 2023. In no event,
7 however, shall this provision alter the duties and obligations imposed upon the parties by
8 Federal Rule of Civil Procedure 26(e). This Order contemplates that each party will
9 conduct discovery in such a manner as to complete, within the deadline, any and all
10 discovery. "Last minute" or "eleventh hour" discovery which results in insufficient time to
11 undertake additional discovery and which requires an extension of the discovery deadline
12 will be met with disfavor, and could result in denial of an extension, exclusion of evidence,
13 or the imposition of other sanctions.

14 **IT IS FURTHER ORDERED** that discovery by interrogatory shall generally be
15 governed by Federal Rule of Civil Procedure 33. However, notwithstanding Federal Rule
16 of Civil Procedure 33, there is a limit of 25 interrogatories per party, including discrete
17 subparts, applicable to this case.

18 **IT IS FURTHER ORDERED** that requests for admissions shall be governed by
19 Federal Rule of Civil Procedure 36. The parties shall serve no more than 20 requests for
20 admissions per party.

21 **IT IS FURTHER ORDERED** reminding counsel of their duty under Rule 26(e) of
22 the Federal Rules of Civil Procedure to supplement all Rule 26(a) disclosures and responses
23 to discovery requests. Pursuant to Rule 26(e)(1), any additions or other changes to
24 information previously disclosed must be made prior to the time that Rule 26(a)(3) Pretrial
25 Disclosures are due. Since this Court effectively requires all Rule 26(a)(3) Pretrial
26 Disclosures to be contained in the Proposed Final Pretrial Order, this Order contemplates
27 that all exhibits and witnesses that may be offered at trial will have been disclosed before
28 the close of discovery as established by the provisions of this Order. This Order therefore

1 supersedes the “thirty-day before trial” disclosure deadline contained in that Rule.
2 Therefore (1) failure to have timely supplemented a Rule 26(a) disclosure, including but
3 not limited to witnesses and exhibits, or (2) a failure to have timely supplemented responses
4 to any valid discovery requests, or (3) attempting to include any witnesses or exhibits in
5 the Proposed Final Pretrial Order that were not previously disclosed in a timely manner as
6 to allow for meaningful discovery prior to the discovery cutoff date as established by this
7 Order, may result in the exclusion of such evidence at trial or the imposition of other
8 sanctions.

9 **IT IS FURTHER ORDERED** that, in the event of a discovery dispute, the
10 parties shall contact the Court to request a telephonic conference prior to filing any
11 discovery motions. The parties shall not contact the Court regarding a discovery dispute
12 unless they have been unable to resolve the dispute themselves, despite personal
13 consultation and sincere efforts to do so. The parties shall not file any written materials
14 related to a discovery dispute or discovery motion without express leave of Court. If the
15 Court does order written submissions, the movant shall include a statement certifying that
16 counsel could not satisfactorily resolve the matter despite personal consultation and sincere
17 efforts to do so, in accordance with LRCiv 7.2(j) of the Rules of Practice of the United
18 States District Court for the District of Arizona.

19 **IT IS FURTHER ORDERED** that the parties shall disclose the identity of any
20 person who may be used at trial to present evidence under Federal Rules of Evidence 701,
21 702, 703, 704, and 705 no later than December 15, 2023.¹ No deposition of any expert
22 witnesses shall occur before the disclosures concerning expert witnesses mandated by this
23 Order are made. Depositions of all expert witnesses must be concluded by February 9,
24 2024.

IT IS FURTHER ORDERED that the disclosures of the identities of any persons

27 ¹ The parties are hereby given notice that this Order requires disclosure greater
28 than that required by Federal Rule of Civil Procedure 26(a)(2).

1 who may be used at trial to present evidence under Federal Rules of Evidence 701, 702,
2 703, 704, or 705 shall also include all of the disclosures required by Federal Rule of Civil
3 Procedure 26(a)(2)(B) if the witness is either (1) retained or specifically employed to
4 provide expert testimony in the case, or (2) is an agent or employee of the party offering
5 the testimony whose duties regularly involve giving expert testimony.

6 **IT IS FURTHER ORDERED** that depositions shall be limited as provided by
7 Rules 30 and 31 of the Federal Rules of Civil Procedure unless the parties otherwise
8 stipulate in writing when permitted to do so pursuant to the Rules or when granted
9 permission to depart from the provisions of the Rules by Order of this Court.
10 Notwithstanding any provision in the Federal Rules of Civil Procedure or the Local Rules,
11 the parties shall conduct no more than 5 depositions per party.

12 **IT IS FURTHER ORDERED** pursuant to Federal Rule of Civil Procedure
13 30(d)(1) that there shall be a time limit of four hours to conduct a deposition of any witness
14 in this case. Additional time shall be allowed where the deponent or a party impedes or
15 delays the examination. This time limit may only be extended by Order of this Court upon
16 motion of any party that demonstrates good cause for doing so. Counsel shall conduct
17 themselves courteously and professionally, especially during the taking of depositions.
18 Any objections made during the course of a deposition must be in accordance with Rule
19 30(c)(2) of the Federal Rules of Civil Procedure.

20 **IT IS FURTHER ORDERED** that notwithstanding any provisions of the Federal
21 Rules of Civil Procedure or any other provisions of this Order, non-party witnesses shall
22 not be permitted to attend, either physically, electronically, or otherwise, the deposition of
23 any other witness in this case without an Order of this Court to the contrary.

24 **IT IS FURTHER ORDERED** that all dispositive motions shall be filed no later
25 than March 15, 2024. Such motions must be, in all respects, in full compliance with the
26 Rules of Practice of the United States District Court for the District of Arizona.

27 **IT IS FURTHER ORDERED** that no submissions to the Court shall contain any
28 footnotes in excess of five (5) lines.

1 **IT IS FURTHER ORDERED** that all parties are hereby specifically admonished
2 that failure to respond to a motion by serving and filing an answering memorandum within
3 the time period expressly provided for in LRCiv 7.2 of the Rules of Practice of the United
4 States District Court for the District of Arizona may be deemed a consent to the denial or
5 granting of the motion and the Court may then dispose of the motion summarily.

6 **IT IS FURTHER ORDERED** that the parties shall not notice oral argument on
7 any motion. Instead, a party desiring oral argument on a motion shall request argument by
8 placing "Oral Argument Requested" immediately below the title of such motion, pursuant
9 to LRCiv 7.2(f) of the Rules of Practice of the United States District Court for the District
10 of Arizona. The Court will then issue a minute order scheduling the oral argument.

11 Oral argument shall be scheduled at the request of a party on all motions to dismiss
12 and motions for summary judgment. On all other motions on which a party requests oral
13 argument, the Court will determine whether oral argument is necessary. **FURTHER, THE**
14 **PARTIES ARE REMINDED THAT OBTAINING A HEARING DATE IS PURELY**
15 **ADMINISTERIAL. ACCORDINGLY, REGARDLESS OF A HEARING DATE, THE**
16 **COURT MAY, AT ANY TIME AFTER THE MOTION IS FULLY BRIEFED,**
17 **DETERMINE THAT A HEARING IS UNWARRANTED AND RULE ON THE**
18 **MOTION WITHOUT ORAL ARGUMENT.**

19 **IT IS FURTHER ORDERED** that any and all motions, requests, or stipulations
20 for extensions of time shall be made in accordance with the provisions of LRCiv 7.3 of the
21 Rules of Practice of the United States District Court for the District of Arizona.
22 Notwithstanding this directive, however, if such a motion, request, or stipulation seeks an
23 extension of time in which to file a memorandum in response or in reply to a motion
24 previously noticed for oral argument, under no circumstances shall such a motion, request,
25 or stipulation seek an extension that would preclude the Court from having at least thirty
26 (30) days from the due date for the filing of the reply memorandum to consider the merits
27 of the underlying motion unless the motion, request, or stipulation also seeks to vacate and
28 reschedule the oral argument. Any motion, request, or stipulation that so seeks both an

1 extension of time and rescheduling of a hearing shall contain a memorandum of points and
2 authorities which demonstrates good cause for the Court to grant the requested extension.

3 **IT IS FURTHER ORDERED** that, if no dispositive motions are pending before
4 the Court after the dispositive motions deadline has passed, Plaintiff(s) shall file a Notice
5 of Readiness for Order Re: Final Pretrial Conference within ten (10) days of the dispositive
6 motions deadline.

7 **IT IS FURTHER ORDERED** that, if dispositive motions are pending before the
8 Court following the dispositive motions deadline, the Court will issue an Order Re: Final
9 Pretrial Conference following its resolution of the dispositive motions, if necessary.

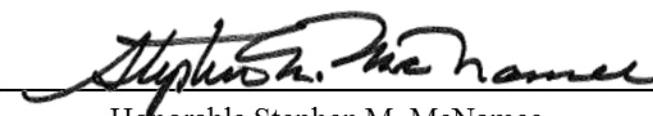
10 **IT IS FURTHER ORDERED** that the Order Re: Final Pretrial Conference shall:
11 1) set deadlines for the filing of and response to motions in limine; 2) instruct the parties
12 on their duties in preparing for the Final Pretrial Conference and for trial; and 3) include a
13 form for the completion of the parties' Proposed Pretrial Form of Order.

14 **IT IS ORDERED** that the attorneys for each party who will be responsible for trial
15 of the lawsuit shall **APPEAR** and **PARTICIPATE** in a Final Pretrial Conference.
16 Because the Final Pretrial Conference is held for the benefit of all parties, and further
17 because the presence of all parties will facilitate frank discussion of the pertinent issues in
18 the lawsuit, **each party, or a representative with binding settlement authority if the**
19 **party is an entity**, shall attend the Final Pretrial Conference. At the Final Pretrial
20 Conference, the Court shall set a firm trial date.

21 **IT IS FURTHER ORDERED** that the parties shall keep the Court informed
22 regarding the possibility of settlement and should settlement be reached, the parties shall
23 file a Notice of Settlement with the Clerk of the Court.

24 **IT IS FURTHER ORDERED** that this Court views compliance with the
25 provisions of this Order as critical to its case management responsibilities and the
26 responsibilities of the parties under Rule 16 of the Federal Rules of Civil Procedure.

27 Dated this 31st day of March, 2023.

28 
Honorable Stephen M. McNamee
Senior United States District Judge